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December 27, 2011

The Honorable Jon S. Scoles
Magistrate Judge
United States Courthouse
4200 C Street SW, Building B
Cedar Rapids, IA 52404

Re: *United States v. Linda F. Pippen*, CR 11-169 LRR

Dear Judge Scoles:

I am writing in regard to the initial appearance, arraignment, and Rule 11 guilty plea hearing scheduled to be held at 9:30 a.m. on Wednesday, December 28, 2011. The attorneys appearing at the hearing will be Peter Deegan and Jill Johnston.

Defendant is charged in a December 8, 2011, Information with 1 count of embezzlement from a program receiving federal funds in violation of 18 U.S.C. § 666(a)(1)(A), and 1 count of aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1). Defendant has agreed to plead guilty to both counts of the Information.

The parties have entered into a plea agreement.

STATUTES

Count 1 - Embezzlement from a Program Receiving Federal Funds

Title 18, United States Code, Section 666 provides:

(a) Whoever, if the circumstance described in subsection (b) of this section exists -

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof -

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other

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than the rightful owner or intentionally misapplies, property that -

(i) is valued at \$5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of \$5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) As used in this section -

(1) the term "agent" means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;

(2) the term "government agency" means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration,

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authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;

(3) the term “local” means of or pertaining to a political subdivision within a State;

(4) the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) the term “in any one-year period” means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.

Count 2 - Aggravated Identity Theft

Title 18, United States Code, Section 1028A provides in relevant part:

[(a)(1)] Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.

* * * *

(c) Definition.— For purposes of this section, the term “felony violation enumerated in subsection (c)” means any offense that is a felony violation of—

* * * *

(5) any provision contained in chapter 63 (relating to mail, bank, and wire fraud);

Predicate Felony for Count 2 - Wire Fraud¹

Title 18, United States Code, Section 1343 provides in relevant part:

¹Although not charged as a separate offense in the information, wire fraud is alleged as the predicate felony for Count 2 (aggravated identity theft).

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Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

ELEMENTS OF THE OFFENSES

Count 1 - Embezzlement from a Program Receiving Federal Funds

The elements of embezzlement from a program receiving federal funds, as charged in Count 1 of the Information, are:

- One,*** the defendant was an agent of Iowa Workforce Development;
- Two,*** beginning no later than May 20, 2008, and continuing through at least November 6, 2009, in the Northern District of Iowa, the defendant embezzled, stole or obtained by fraud property of a value of \$5,000 or more as part of a single scheme or plan;
- Three,*** the property was owned by, or under the care, custody and control of Iowa Workforce Development;
- Four,*** Iowa Workforce Development received benefits in excess of \$10,000 in the one-year period beginning May 20, 2008, pursuant to a federal program involving a subsidy of federal funds.

As used in this instruction, the term “agent” means a person authorized to act on behalf of Iowa Workforce Development and includes an employee.

To “embezzle” means knowingly, voluntarily and intentionally to take, or to convert to one’s own use, the property of another which came into the defendant's possession lawfully.

To “steal” means knowingly to take with the intent to deprive the owner permanently or temporarily of the rights and benefits of ownership.

To “obtain by fraud” means to act knowingly and with intent to deceive or cheat, usually for the purpose of causing a financial loss to someone else or bringing about a financial gain to oneself or another.

“Conversion” means the deliberate taking or retaining of the money or property of another with the intent to deprive the owner of its use or benefit either

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temporarily or permanently. Conversion includes the misuse or abuse of property as well as use in an unauthorized manner or to an unauthorized extent.

Eighth Circuit Model Criminal Jury Instruction No. 6.18.666A (2011).

Count 2 - Aggravated Identity Theft

The elements of aggravated identity theft, as charged in Count 2 of the Information, are:

- One,** in or about 2009, in the Northern District of Iowa, the defendant knowingly used the name or social security number of R.O.;
- Two,** the defendant knew that the name or social security number the defendant used belonged to another person;
- Three,** the defendant used the name or social security number without lawful authority; and
- Four,** the defendant used the name or social security number during and in relation to the crime of wire fraud.

The phrase “without lawful authority” means that defendant used another's name, address, or social security number without that person's permission or having obtained that person's permission illegally.

The phrase “during and in relation to” means that the name or social security number was used in furtherance of the commission of the crime of wire fraud; it must have been used to some purpose or effect with respect to the commission of the crime of wire fraud; the presence or involvement of the name or social security number in the commission of the wire fraud cannot be the result of accident or coincidence. The name or social security number must facilitate or have the potential to facilitate commission of the wire fraud.

Eighth Circuit Model Criminal Jury Instruction No. 6.18.1028A (2011).

Predicate Felony for Count 2 - Wire Fraud

The elements of wire fraud, for purposes of Count 2 of the Information, are:

- One,** in or about 2009, in the Northern District of Iowa, the defendant voluntarily and intentionally devised or made up a scheme to defraud another out of money, which scheme is described as follows: defendant made fraudulent entries in Iowa Workforce Development's computer system to cause unemployment

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insurance benefits in other persons' names, including R.O., to be directed to bank accounts under defendant's control, and defendant used the money for defendant's own purposes;

Two, the defendant did so with the intent to defraud; and

Three, the defendant used, or caused to be used, interstate wire facilities in furtherance of, or in an attempt to carry out, some essential step in the scheme.

The phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money by employing material falsehoods, concealing material facts, or omitting material facts. It also means the obtaining of money or property from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

Eighth Circuit Model Criminal Jury Instruction No. 6.18.1341 (2011) (modified consistent with 18 U.S.C. § 1343).

MAXIMUM AND MINIMUM PENALTIES

Count 1 - Embezzlement from a Program Receiving Federal Funds

- (1) up to 10 years' imprisonment without the possibility of parole;
- (2) a fine equal to the greater of twice the gross gain to defendant resulting from the offense, twice the gross loss resulting from the offense, or \$250,000;
- (3) a mandatory special assessment of \$100; and
- (4) a term of supervised release of up to 3 years.

Count 2 - Aggravated Identity Theft

- (1) by a mandatory sentence of 2 years' imprisonment to be served consecutively to any other sentence imposed;
- (2) a fine of not more than \$250,000;
- (3) a mandatory special assessment of \$100; and
- (4) a term of supervised release of up to 1 year.

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FORFEITURE

Pursuant to paragraph 20 of the plea agreement, defendant has agreed to entry of a forfeiture judgment in the amount of \$43,582.42 against her at the time of sentencing.

Pursuant to Federal Rule of Criminal Procedure 32.2(b)(1), at the time of the guilty plea hearing, the United States will ask the Court to make a finding that the government has established the requisite nexus between the property described in the forfeiture allegation and defendant's offense. The United States also will ask the Court to enter a Preliminary Order of Forfeiture related to this same property. See Fed. R. Crim. Pro. 32.2(b)(2).

OTHER CONSEQUENCES OF THE PLEA

As a felon, defendant will lose her right to vote, to serve on a jury, to hold public office, and to possess a firearm and ammunition.

PLEA AGREEMENT/ FACTUAL BASIS FOR THE PLEA

A factual basis for the plea is contained in the plea agreement that will be forwarded separately to the court.

DETENTION

Defendant is not in custody. Detention is not mandatory.

Sincerely,

STEPHANIE M. ROSE
United States Attorney

By: s/Peter E. Deegan, Jr.

PETER E. DEEGAN, JR.
Assistant United States Attorney

cc: Jill Johnston, Esq.